IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 67 OF 2003.

The State (Govt. of India),
represented by Shri Satish Puri,
Director of Mines Safety,
Goa Region, Bernardo Costa Road,
Margao, Goa. .... Petitioner.

Versus

1. Shri G.N. Agrawal,
of major age, C/o M/s. G.N.Agrawal,
Anand Bhuvan, Station Road,
Margao, Goa.

2. Shri D.S. Kudchadkar,
of major age, C/o M/s. G.N. Agrawal,
Anand Bhuvan, Station Road,
Margao, Goa.

3. Shri Pappu Kejriwal,
of major age, C/o M/s. G.N. Agrawal,
Anand Bhuvan, Station Road,
Margao, Goa.

4. Shri Suraj Gupta,
of major age,
71/141, Sutar Thana,
Post Naya Ganj, Distt. Kanpur,
Uttar Pradesh, Pin Code 208001. .... Respondents.

Shri E.P. Badri Narayanan, Additional Central Government Standing Counsel for the Petitioner.

Shri S.D. Lotlikar, Senior Advocate with Ms. S. Dessai, Advocate for the Respondents No.1, 2 and 3.

CORAM: V. M. KANADE, J.

DATE: 23rd JUNE, 2005.

J U D G M E N T:

The petitioner is the original complainant and has filed this Criminal Revision Application challenging the Order passed by the Sessions Judge, South Goa at Margao in Criminal Revision Application No. 18/2003 whereby the respondents/accused were discharged from the Criminal Case which was filed against them by the petitioner.

2. The brief facts which are relevant for the purpose of deciding this Criminal Revision Application are as under :-

A criminal complaint was filed by Shri Satish Puri, Director of Mines Safety against the respondents for having committed an offence punishable under Section 72-C(1)(a) and 73 of the Mines Act, 1952. In the complaint, it was alleged that the respondent No.1 was the owner of an Iron Ore Mine and accused No.2 and 3 were the Agents and accused No.4 was the Manager of the said Mine. It was alleged in the complaint that two workers namely Laxman Kattimani and Ashok Wadar were employed by the accused and they were asked to operate the water pump. This water pump was situated on an over burdened dump. On 2.8.01 the said dump was washed away, as a result of which the pump room and the generator room were also washed away with it and the two workers who were inside the pump room died and their bodies were found on the next day. It was alleged in the complaint that the accused were granted permission to carry on the mining activity under Regulation 106(2)(b) of the Metalliferous Mines Regulations, 1961 (hereinafter referred to as the said Regulations) vide letter dated 14.5.99. It was alleged that

the accused had violated the permission which was granted under the letter dated 14.5.99 and as a result had contravened Regulation 181 read with Regulation 106(2)(b) of the said Regulations and Order dated 14.5.99 and therefore the said contravention constituted an offence punishable under Section 73 of the Mines Act and the accused were severally and vicariously liable for the said contravention. It was further alleged that they were also liable under Section 72-C(1)(a) of the said Act. Along with the complaint a report submitted by the complainant was also annexed.

3. The Trial Court issued process against the accused on the basis of the said complaint which was filed by the complainant. The accused thereafter preferred an application for recalling the order of process which was passed by the Magistrate. The learned Magistrate however confirmed its earlier Order and dismissed the application for recall of process.

4. The accused thereafter preferred Criminal Revision Application before the Sessions Court. The Sessions Court allowed the Criminal Revision Application and discharged the accused for the offences punishable under the Mines Act.

5. The Union of India has preferred this Criminal Revision Application against the said Judgment and Order passed by the Sessions Court.

6. The learned counsel appearing on behalf of the Union of India has submitted that the Sessions Court has committed an error in discharging the

accused by evaluating the evidence which was on record. He submitted that the Trial Court ought not to have pre-judged the case which was at the stage of issuance of process as the entire evidence was not brought on record by that time. It was submitted that therefore the order of discharging the accused was vitiated on account of evaluation of the evidence by the Sessions Court. The learned counsel for the Union of India submitted that at the stage when the process was issued, the Sessions Court was not expected to appreciate the evidence to find out whether any offence was in fact committed by the accused or not. In support of the said submission he relied on the Judgment of the Supreme Court in the case of ***State of Delhi v. Gyan Devi and others (2001 Cri.L.J. 124)*** and on the judgment of the Himachal Pradesh High Court reported in ***R.K. Vol Goldstain and another v. Stanley Haque (1979 Cri.L.J. 338)*** .

7. The learned counsel appearing on behalf of the respondents submitted that the Sessions Court was justified in coming to the conclusion that no offence was made out by the prosecution. He invited my attention to the complaint which was filed by the complainant. He submitted that no material particulars were mentioned in the complaint and the exact cause of the accident was essentially the heavy downpour which had taken place for two days, as a result of which the accident had taken place. He submitted that the Sessions Court had correctly come to the conclusion that the cause of the accident was the heavy rains and that from the complaint or the report no case was made out against the accused. He further submitted that in the complaint it was alleged that the accused had committed an offence punishable under

Section 72-C(1(a) and 73 of the Mines Act, 1952. However, the complaint did not specify as to what was the contravention which was committed by the accused as laid down in the said Sections. He further submitted that no case was made out in the complaint. He submitted that no averment was made in the complaint that on account of any act or omission, on the part of the accused the two workers had died. He further submitted that there was no allegation of negligence made in the complaint. He further submitted that no categorical allegation that the dump was at 60 degrees and not at 37 degrees and therefore the accused were responsible for the death of the two workers. He submitted that criminal liability could not be fastened against the accused without making proper averments in the plaint. He submitted that it is settled law that the criminal law could not be set in motion on vague allegations. He further submitted that there were no allegations in the plaint about the breach of Regulation 106. He submitted that Section 72-C(1)(a) and Section 73 were penal provisions and unless the particular violation of any particular provision under the Act is mentioned, the accused would not be liable under the penal provisions.

8. I have heard learned counsel appearing on behalf of the Petitioner and respondents at length. I have perused the complaint that is filed by the complainant and also the order passed by the Sessions Court. The complainant in his complaint has alleged and has made a specific averment that the accused had contravened Regulation 181 of the said Regulations read with permission granted under Regulation 106(2)(c) of the said Regulations vide letter No.GO-1/AP(106-2b)/1505 dated 14.5.99 and that the accused had

failed to frame Code of Practice for dump sites. Particulars about the nature of the offence are mentioned in para 5 of the complaint. In para 4 the particulars of the accused have been given. Along with the complaint the Accident Report which is submitted by the complainant has been annexed in which particulars regarding the cause of the accident, the persons who are responsible for the said accident, further information about the accident as also general information regarding the Mine have been stated in detail. The report also reveals the events before the accident, the inspection and inquiry which was made by the complainant, the result of the inquiry and the recommendations made have been stated. The report therefore attached to the complaint will have to be treated as part of the complaint.

9. After reading the complaint and the report, the facts which emerge are as under :-

From the report, it can be seen that there was an old over burdened dump at the distance of 90 metres from Pit No.10. Two workers were working in the dump house near Pit No.10. Water from the Pit was pumped to a plant which was at a distance of about 1.5 kms. On 2.8.01 at about 9.00 p.m. One Hemant Naik who was at the said plant noticed that the supply of water to the said plant had stopped. He therefore along with one helper went to Pit N.o.10 to find out what was the problem. When they reached Pit No.10 they found that the generator room had collapsed and the Control room was covered by a sludge of mud which had slided from the said dump which was situated at a distance of about 90 metres from the site. The workers were not found at the site. Immediately the work of removing the sludge was taken up.

However, the whereabouts of the workers could not be known till their dead bodies were recovered from Pit No.10 on 4.8.01. The complainant in his report, observed that the over burdened dumps were at an angle of 60 degrees, though according to the permission which was granted by the authorities to the accused for operating the Mine they were supposed to keep the dump at an angle of 30 degrees. At this stage it would be relevant to consider the relevant provisions of the said Act and Regulations. Regulation 106(2)(b) lays down the work of mining shall not be commenced either by the owner of the Mine or his agent or manager unless 60 days before starting such work, notice in writing of the method of working is given to the Chief Inspector and the work is carried out in accordance with such conditions which are laid down by the Chief Inspector. In the present case there is a specific reference to Section 106 of the said Regulations in the complaint as also the permission which was granted by Order dated 14.5.99. On perusal of the said permission dated 14th May, 1999 which is annexed at Exh.E to the application, it can be seen that clause 18 lays down the duty of the manager and clause 18(1)(g) lays down that precautionary measures should be taken to ensure safe operation and maintenance of transport vehicles, excavators and other earth moving equipment and machines and also for safety of all work persons. (emphasis supplied). Further a circular was issued by the Government under Circular No.Tech.2/1986. It was specifically laid down in clause 6(5) "Code of Practice" for prevention of injuries to persons had to be followed. One of the averments in the complaint and in the report is that because the height of the dump was allowed to increase and was not maintained at 37 degrees from the horizontal, but had piled upto 60 degrees, the dump had collapsed and had resulted in the collapse

of the dump house, as a result of which the two persons were washed away and killed. Further Regulation 181 of the said Regulations lays down that no person shall negligently or wilfully do anything which which is likely to endanger the life or limb in the Mine or omit to do anything necessary for the safety of the Mine or of the persons employed therein. Section 72-C(1)(a) and Section 73 of the Act lay down that if there is a contravention of any of the provision of the Act it shall entail a criminal liability. From the complaint it can be seen that there is a specific averment that the accused had contravened Regulation 181 and Regulation 106(2)(b) along with the violation of the permission which was granted to the accused to operate the Mine and thus had not maintained the height of the dump at 37 degrees and had allowed the height of the dump to increase upto 60 degrees which had resulted in the loss of two lives. The provisions of the Act make the owner, agent and the manager vicariously liable. Thus in my view prima facie case has been made out by the complainant in his complaint. The Sessions Court in my view has committed an error of law in coming to the conclusion that the accused had not acted negligently or had wilfully endangered the life or limb of the persons employed in the Mine and therefore could not be prosecuted for violation of Regulation 181 of the Regulations. The Sessions Court further committed error of law in coming to the conclusion that Regulation 106(2)(b) read with Section 72-C(1)(a) of the Act was not attracted to the facts of the case. The Sessions Court also in my view has erred in putting the burden on the complainant by not having inspected the Mines or having inspected the Mines and not having asked the owner, agent or manager to maintain the level of the dump/slope at 37 degrees from the horizontal. The Sessions Judge has observed in para 24 of his Order that the

permission to operate the Mine was good for one shift only and that the report showed that it was also doing work in a second shift. The Sessions Judge has observed that no action was taken by the complainant for the violation of the said condition. The Sessions Judge further observed that the complainant as an inspector might have visited the Mine of the accused and might have noticed the dumps many times, but was not the case of the complainant that the complainant had advised the accused that the said dumps were not being maintained at 37 degrees. In my view the said finding is incorrect as the said Regulation imposes a duty and liability on the owner, agent and manager of the Mines and was supposed to maintain the safety regulations irrespective of the fact whether the Inspector of the Mines brings this fact to their notice or not.

The Sessions Court further has observed that it was a heavy downpour which was the immediate and proximate cause of the dump being washed away resulting in the collapse of the pump house and the eventual death of the two workers. In my view the Trial Court had come to this conclusion on the basis of the submissions which were made by the learned counsel appearing on behalf of the accused. In my view this is not the stage where the Sessions Judge could have evaluated the facts which were available on record for the purpose of coming to the conclusion whether the accused had committed the said offence or not. In my view at the stage of issuance of process the Magistrate is expected to see whether a prima facie case is made out or not and accordingly either issue process or reject the complaint. The Sessions Judge in my view has clearly erred in giving a finding at a stage when the evidence in its entirety had not been brought on record by the complainant.

The Sessions Court in my view had pre-judged the issue on the entire evidence brought on record. I am fortified in my view by the judgment of the Supreme Court in the case of ***State of Delhi v. Gyan Devi (supra)***. The Supreme Court in para 10 has observed as under :-

> "10. In a recent decision in State of M.P. v. S.B. Johari, (2000) 2 SCC 57: (2000 AIR SCW 189 : AIR 2000 SC 665 : 2000 Cri L J 944), this Court, adverting to the question of quashing of charges in the light of the provisions contained in Ss. 227 and 288, 401 and 397 and 482, Cr.P.C. did not favour the approach of the High Court in meticulously examining the materials on record for coming to the conclusion that the charge could not have been framed for a particular offence. This Court, while quashing and setting aside the order passed by the High Court, made the following observations :
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> ". . . . After considering the material on record, learned Sessions Judge framed the charge as stated above. That charge is quashed by the High Court against the respondents by accepting the contention raised and considering the details of the material produced on record. The same is challenged by filing these appeals.
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> In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons record by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the

stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. . . . ."

Judged in the light of the settled position of law as reiterated in the decisions noted above, the order under challenge in the present case does not stand the scrutiny. The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the question whether the charge under Sec. 304/34, I.P.C. framed against the accused respondents 1 and 2 was likely to succeed or not. This question was to be considered by the trial Judge after recording the entire evidence in the case. It was not for the High Court to pre-judge the case at the stage when only a few witnesses (doctors) had been examined by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the

> case make it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Sec. 482, Cr.P.C. is warranted in the interest of justice. On consideration of the matter we have no hesitation to hold that the order under challenge is vitiated on account of erroneous approach of the High Court and it is clearly unsustainable. "

10. In my view the ratio laid down by the Supreme Court is squarely applicable to the facts of the present case. The Order of the Sessions Court is therefore liable to be quashed and set aside.

11. In the result, the Criminal Revision Application is allowed. The Judgment and Order passed by the learned District and Sessions Judge, South Goa, Margao in Criminal Revision Application No.18/2003 is quashed and set aside. The J.M.F.C. at Sanguem is directed to decide the case on merits and in accordance with law. The trial Court shall not be influenced by any observations made by this Court while passing this Order.

V. M. KANADE, J.

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